

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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USVALDO CONTRERA and FRANCISCO  
LOPEZ, individually and on behalf of all others  
similarly situated,

Plaintiffs,

**DECLARATION OF  
MARC A. RAPAPORT**

Case No. 16-CV-03851  
(LTS) (GWG)

- against -

IRVING LANGER, *et al.*,

Defendants.

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I, Marc A. Rapaport, declare, pursuant to 28 U.S.C. § 1746, as follows:

1. I am counsel for plaintiffs Usvaldo Contrera and Francisco Lopez in this action, which asserts claims for wages based on the Fair Labor Standards Act and New York Labor Law.

2. I respectfully submit this Declaration in opposition to the motion to dismiss pursuant to R. 12 (b)(6) that was filed on behalf of all but eleven of the Defendants.

3. Prior to filing the Complaint, my firm undertook extensive investigation regarding the number, location and periods of ownership of more than 260 apartment buildings (the “Buildings”) in New York City where Defendants employed nearly 300 superintendents and porters during the time periods relevant to the Complaint.

4. The Complaint’s allegations regarding the addresses of the Buildings where the putative class members worked are based, in part, on databases maintained by the NYC Department of Housing Preservation and Development (HPD); NYC’s Automated City Register Information System (ACRIS); and the New York Department of State’s Division of

Corporations. Information was also obtained from public statements and court filings by Defendants.

5. To identify nearly 300 superintendents and porters who are members of the putative class (i.e., superintendents who worked at the E&M Enterprise's buildings during the applicable time periods and who were subjected to Defendants' common personnel practices), my firm's staff and I relied, in part, on Defendants' submissions to the New York State Division of Human Rights (NYSDHR) in the age discrimination proceeding, "Lopez v. E&M Bronx Associates LLC", Case No. 10168556 (the "Lopez NYSDHR Proceeding"), which we obtained via FOIL request. Copies of relevant pages of Defendants' submissions to the NYSDHR are attached hereto as Exhibits 1, 2 and 3.

6. In the Lopez NYSDHR Proceeding, Lopez (who is one of the representative plaintiffs herein) alleged that he was terminated from his position as superintendent of 638 West 160<sup>th</sup> Street based on his age. As part of its defense to Lopez' charge, E&M Bronx provided NYSDHR with a list of the names and birth dates of its 286 superintendents and porters, and, thereafter, with "Employee Detail" pages for each superintendent and porter.

7. The Complaint's allegations regarding Defendants' functioning as a single enterprise and their status as joint employers, as well as its allegations relating to the individual defendants' control over the E&M Enterprise and its personnel, are based, in part, on the deposition testimony of Defendants Meyer Brecher ("Brecher") and Aryeh Z. Ginzberg ("Ginzberg") in the EDNY Federal Court case, *The Fortune Society, Inc. v. Sandcastle Towers Housing Development Fund Corp, Sarasota Gold LLC, E&M Associates LLC, Weissman Realty Group LLC*, Case No. 1:14-CV-64120. Pertinent pages of Ginzberg's deposition transcript are

collectively attached hereto as Exhibit 4. Pertinent pages of Brecher's deposition transcript are collectively attached hereto as Exhibit 5.

8. The Complaint's allegations regarding Defendant's unified and deeply intertwined structure are based on all of the materials and information described hereinabove, plus documents and corporate records filed by both parties in the New York County Supreme Court Proceeding, *Georgia Malone & Company, Inc. v. E&M Associates et al.*, NY County Index No. 150660/2014 (the "Georgia Malone Case"). One such record, which is attached hereto as Exhibit 6, is a diagram depicting Defendants' ownership and control of a group of 32 apartment buildings known as the "Harlem Portfolio," which includes the two buildings where the representative Plaintiffs Lopez and Contrera worked.

9. I declare under penalty of perjury that the foregoing is true and correct.

Dated: New York, New York  
November 2, 2016

/s/ Marc A. Rapaport (via ECF)  
Marc A. Rapaport